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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES ALLEN CHESTER,

Defendant and Appellant.

E049157

(Super.Ct.No. FVA901072)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson, Judge. Affirmed with directions.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant James Allen Chester pled guilty to inflicting corporal punishment on a cohabitant. (Pen. Code, § 273.5, subd. (a).) His sole claim on appeal is that the trial court erred in imposing a court security fee of \$50. We affirm with directions.

I. BACKGROUND

Defendant committed his crime on June 28, 2009, and pled guilty on July 9, 2009. He was sentenced on August 6, 2009. At sentencing, the trial court imposed “a court security fee of \$50.” The sentencing minute order states, “surcharge of \$50.00 imposed pursuant to PC1465.8(a).” The probation officer’s report “recommended that the Court order the Defendant to pay a CSC fee of \$50.00 consisting of a \$20.00 Court Security Fee pursuant to Penal Code section 1465.8 and a \$30.00 Criminal Conviction Fee pursuant to Government Code section 70373.”

Senate Bill 13XXXX was chaptered and immediately effective on July 28, 2009. As one of its provisions, it amended Penal Code section 1465.8 to increase the court security fee to \$30.00. It was adopted during a legislative session called by the Governor following his declaration of a fiscal emergency; it was intended to address the fiscal emergency. (Sen. Bill. No. 13XXXX (2009-2010 4th Ex. Sess.) § 29.)

II. CONVICTION FEES

Defendant contends the imposition of a \$50 court security fee was unauthorized and must be reduced to \$20 because the increase in the Penal Code section 1465.8 fee occurred after defendant had committed his offense. The People concede.¹ We disagree. The \$50 fee was for both a court security fee pursuant to Penal Code section

¹ The People’s concession letter was directed at fees imposed for reimbursement of appointed counsel under Penal Code section 987.8. However, such fees were not imposed in this case, and defendant’s appeal is not directed at such a fee. Nevertheless, we interpret the People’s concession as an indication that, in the interests of judicial economy, they will not contest the \$30 reduction sought by defendant.

1465.8 and a facilities assessment pursuant to Government Code section 70373.

Further, the court security fee should have been imposed in the amount of \$30.

A. Conviction Fees and Assessments Are Mandatory

Penal Code section 1465.8, subdivision (a)(1), provides that, “a fee . . . *shall* be imposed on every conviction for a criminal offense” (Italics added.) Government Code section 70373, subdivision (a)(1), provides that, “an assessment *shall* be imposed on every conviction for a criminal offense” (Italics added.)

This language is mandatory. Thus, both need to be imposed. If they are not imposed, the judgment should be modified on appeal to include them. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328 discussing Pen. Code, § 1465.8.)

The trial court imposed “a court security fee of \$50,” mirroring the \$50 recommended in the probation report for both the Penal Code section 1465.8 fee and the Government Code section 70373 assessment. However, the sentencing minute order erroneously attributes the \$50 solely to Penal Code section 1465.8. Accordingly, the sentencing minute order should be modified to attribute the \$50 correctly.

B. The Increase Was Effective Immediately

At the time defendant was sentenced, the court security fee was \$30. However, the \$50 imposed by the trial court was for both Penal Code section 1465.8, a \$30 fee, and Government Code section 70373, a \$30 assessment. Defendant contends the increased court security fee may not be imposed because neither Senate Bill No. 13XXXX nor Penal Code section 1465.8 contain a provision for retroactive application. We disagree.

In *People v. Alford* (2007) 42 Cal.4th 749 (*Alford*), our Supreme Court held that when Penal Code section 1465.8 was enacted it applied to all convictions after the operative date regardless of the date of the offense. The court rejected arguments based upon the presumption against retroactivity in Penal Code section 3 and on ex post facto grounds. The court held that the Legislature adopted the nonpunitive fee as part of a budgetary measure to fund court security. (*Alford*, at pp. 756-757.) It held that the measure was intended to be operative immediately because if it only applied to those who committed offenses after its effective date it “would not have produced the needed revenue in the budget year. The income would only be realized at some future time as the cases wended their way through the system.” (*Id.* at 754.)

Defendant’s argument, in effect, resuscitates the retroactivity argument rejected by our Supreme Court in *Alford*. However, the same analysis applied in *Alford* applies here: the \$10 increase in a fee to fund court security does not amount to a prohibited ex post facto punishment because it is not a punitive fine. The Legislature intended the increase to apply to all convictions, including those for offenses that occurred prior to the effective date of the legislation. (See *Alford*, *supra*, 42 Cal.4th at pp. 756-757; see also *People v. Brooks* (2009) 175 Cal.App.4th Supp. 1, 5-7 [applying *Alford* to hold that Gov. Code, § 70373 was not an ex post facto law].) Indeed, the intent for retroactivity is stronger with the increase than with the original fee at issue in *Alford*. This is because the Legislature made this bill effective immediately, while the original fee provided a 15-day waiting period. This indicates the increased severity of the budget environment, as well as the immediate necessity for increasing contributions into the trial court trust

fund. Furthermore, Senate Bill No. 13XXXX includes a sunset on the fee increase—on July 1, 2011, the start of a new fiscal year, the fee is reduced back to \$20. This indicates the Legislature’s intent that the extra \$10 be collected in a defined period of time: the 2009-2010 and 2010-2011 fiscal years. If the fee increase was not immediately effective then, to paraphrase *Alford*, it “would not have produced the needed revenue in the budget year[s].” (*Alford*, at p. 754.)

Accordingly, because the fee was imposed after the operative date of the increase, defendant’s conviction was subject to the increased court security fee, and the judgment should be modified to include the correct fee.

III. DISPOSITION

The court security fee is increased by \$10 to \$30. The superior court clerk is directed to amend the sentencing minute order to reflect a \$30 court security fee pursuant to Penal Code section 1465.8 and a \$30 facilities assessment pursuant to Government Code section 70373. In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

KING
J.